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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,981	10/31/2003	Sheryl E. Siegel	200.1162US	8850

7590 12/23/2008  
DAVIDSON, DAVIDSON & KAPPEL, LLC  
14th Floor  
485 Seventh Avenue  
New York, NY 10018

EXAMINER
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YOUNG, MICAH PAUL

ART UNIT	PAPER NUMBER
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1618

MAIL DATE	DELIVERY MODE
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12/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/698,981	SIEGEL, SHERYL E.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MICAH-PAUL YOUNG	1618	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4,6,11 and 74-90 is/are pending in the application.
- 4a) Of the above claim(s) 1,2,4,11,81,83,85 and 89 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,6,74-80,82,84,86-88 and 90 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/18/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

**Acknowledgment of Papers Received:** Amendment/Response dated 9/04/08.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 8/18/08 was filed after the mailing date of the Specification on 10/31/03. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Election/Restrictions***

Newly submitted claims 1, 2, 4, 11, 81, 83, 85, 87 and 89 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 1, 2, 4 and 11 are drawn to non elected subject matter. Applicant elected the invention of group II with a species election from group b., the method of identifying a drug by imparting a scent onto a drug formulation. Claims 1, 2, 4, 87 and 89 are drawn to identifying a drug by detecting a scent that has already been imparted, *not* by imparting a scent. Claim 11 is drawn to detecting counterfeit drug materials, not imparting a scent on a drug. Claims 81, 83 and 85 are drawn to a handheld electronic device for detecting scents; however the scent is not imparted during the method.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1, 2, 4, 11, 81, 83, 85, 87 and 89 are withdrawn from

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consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3, 6, 74-80, 82, 84, 86-88, and 90 are rejected under 35 U.S.C. 102(b) as being anticipated by Woodford (USPN 4,260,517 hereafter '517). The claims are drawn to a method of identifying a pharmaceutical by imparting a scent on the dosage form.

The '517 patent discloses a method of identifying various forms of cocaine by imparting a scent to the cocaine (abstracts). Scents are used to determine the source (region, soil condition) of the cocoa leaves used to make cocaine, as well as the purity of the processed cocaine (col. 1, lin. 44-54; col. 2, lin. 29-50). The scent is differentiated by a gas chromatography machine or mass spectrometer (col. 4, lin. 32-42). The invention can be applied during the manufacture of the cocaine and would react with the cocaine to provide information regarding its origin (abstract). Also envisioned by the invention are methods of identifying cosmetics by imparting microencapsulated scents (col. 2, lin. 5-8). The microcapsules are applied to the cosmetic so when they are broken they release the source identifying scent (col. 5, lin. 5-15). These disclosures render the claims anticipated.

***Response to Arguments***

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Applicant's arguments with respect to claims 3, 6, 74-80, 82, 84, 86-88, and 90 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICAH-PAUL YOUNG whose telephone number is (571)272-0608. The examiner can normally be reached on Monday-Friday 7:00-4:30; every other Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael G. Hartley/  
Supervisory Patent Examiner, Art Unit 1618

/MICAHA-PAUL YOUNG/  
Examiner, Art Unit 1618